RECENT CASES

ADVERSE POSSESSION—RAILROADS—PUBLIC LANDS—EFFECT OF ABANDONMENT.—MILLS V. DENVER & R. G. R. Co., 198 FED., 137.—*Held,* where a railroad company, which by the construction of its road has acquired a right of way over public land, has abandoned the same by relocation of its line and the removal of its track, the old right of way becomes subject to the rules governing property privately owned, and title thereto may be acquired by adverse possession under color of title.

As to whether a railroad right of way is the subject of adverse possession there is a conflict among the authorities. Many cases have held that title may be so acquired. *Matthews v. Lake Shore & M. S. R. Co.,* 110 Mich., 170; *Pittsburg R. R. Co. v. Stickney,* 155 Ind., 312; *Illinois Central R. R. Co. v. Houghton,* 126 Ill., 233. In other jurisdictions it is held that a railroad right of way cannot be acquired by adverse possession on the ground of the public nature of such a right of way. *Southern P. R. R. Co. v. Hyatt,* 132 Cal., 240; *McLucas v. St. Joseph R. R. Co.,* 67 Neb., 603. In other jurisdictions a railroad right of way is put under the protection of a statute. *Littlefield v. Boston R. R. Co.,* 146 Mass., 268; *Costello v. Grand Trunk R. R. Co.,* 70 N. H., 403; *St. Louis R. R. Co. v. Smith,* 170 Mo., 327. The principal case does not deny the contention of the defendant that a title acquired under an act of Congress cannot be taken from it, but it draws a distinction, in that in the case under consideration the right of way having been abandoned by the railroad company the reason for the rule no longer exists. The company having taken up another route, the old route loses its public nature and becomes subject to the rules governing private property.

BILLS AND NOTES—EVIDENCE—PARTIES—PRESUMPTIONS—NATURE OF LIABILITY.—WOODSVILLE GUARANTY SAVINGS BANK V. ROGERS ET AL., 83 ATL., 537 (VT.)—*Held,* that strangers to a note, who sign their names on the back thereof, become *prima facie* makers, but may show that they are indorsers and liable only as such.

Before the adoption of the Negotiable Instruments Law there was considerable diversity of opinion as to the liability of a stranger who signed his name on commercial paper. In some of the States such an indorser was *prima facie* regarded as guarantor. *Parkhurst v. Vail,* 73 Ill., 343; *Lyon & Co. v. Bank,* 85 Fed., 120. In other jurisdictions he was regarded as joint maker. *Good v. Martin,* 95 U. S., 90; *Currier v. Fellows,* 27 N. H., 366. The Massachusetts Courts adopted a stringent rule, holding such a party liable as maker, and did not admit parol evidence to show that such was not his real contract. *Way v. Butterworth,* 108 Mass., 509. Still other jurisdictions regarded him as indorser. *Moore v. Cross,* 19 N. Y., 227; *Riggs v. Waldo,* 2 Cal., 485. But these Courts again dif-

fered as to whether he was first or second indorser; some holding him *prima facie* second indorser. *Coggswell v. Hayden,* 5 Ore., 22; *Phelps v. Vischer,* 50 N. Y., 69. Others treated him as first indorser. *Davis v. Barron,* 13 Wis., 227. In England such an indorser was not liable at all. *Steele v. McKinley,* 5 App. Cas., 754; *Gwinnell v. Herbert,* 5 Adol. & E., 436. The Negotiable Instruments Law has made important changes in the States where it has been adopted. Section 17, subdivision 6, provides that where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is deemed an indorser. Section 64 provides that where a person, not otherwise a party to the instrument places thereon his signature in blank before delivery, he is held as indorser in accordance with the following rules: (1) If the instrument is payable to the order of a third person, he is liable to the payee and all subsequent parties. (2) If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer. (3) If he signs for the accommodation of the payee he is liable to all parties subsequent to the payee. Section 68 provides that as respects one another, indorsers are liable *prima facie* in the order in which they indorse, but evidence is admissible to show that as among themselves they have agreed otherwise. Since the passage of the act there has been some conflict as to whether parol evidence may be received to give the contract a different effect; some Courts holding that parol evidence is admissible; *Haddock v. Haddock,* 192 N. Y., 499; *Bank v. Busby,* 113 S. W. (Tenn.), 390; others holding it not. *Bank v. Bichel,* 143 Ky., 754; *Nimmecll v. Weil,* 95 Ill App., 15; *Baumeister v. Kuntz,* 35 Fla., 340. It is the evident purpose of the statute to exclude parol evidence, and make the written contract control the rights of the parties; therefore to allow parol evidence is reading into the act a meaning not expressed by the words themselves. The act has not been adopted in Vermont.

CONSTITUTIONAL LAW—UNLAWFUL DISCRIMINATION—RAILROAD RATES. —STATE EX REL. SIMPSON V. CHICAGO, M. & ST. P. RY. CO., 137 N. W., 2 (MINN.).—*Held,* that an act establishing a lower rate than the maximum passenger rate for the carriage of the members of the State's military force upon railroad lines within the State, when such members are required to so travel under orders in discharge of their military duties, is not an unlawful discrimination of which the defendant may complain; the defense having been waived that such rate is not compensatory.

There is but one other case that discusses this question and that case reaches a conclusion contrary to the one established in the principal case, holding the act unconstitutional under the Fourteenth Amendment to the Constitution of the United States. *Re Gardner,* 84 Kan., 264. But similar statutes requiring a street car company to carry school children at half the regular fare have been held valid. *Com. v. Interstate Street R. R. Co.,* 207 U. S., 79; *Fitzmaurice v. N. Y., N. H. & H. R. R. Co.,* 192 Mass., 159; *San Antonio Traction Co. v. Altgelt,* 200 U. S., 304. A law requiring a